TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 21.

THE PEOPLE OF THE STATE OF NEW YORK, EX REL. PARKE DAVIS & COMPANY, PLAINTIFFS IN ERROR,

vs.

JAMES A. ROBERTS, COMPTROLLER OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED AUGUST 20, 1898.

(16,368.)

(16,368.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 221.

THE PEOPLE OF THE STATE OF NEW YORK, EX REL. PARKE DAVIS & COMPANY, PLAINTIFFS IN ERROR,

vs.

JAMES A. ROBERTS, COMPTROLLER OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

INDEX.

	Original.	Print.
Caption in court of appeals	*a*	1
Remittitur from court of appeals	*b*	1
Record on appeal to court of appeals	1	2
Petition for writ of certiorari	1	2
Bond	7	6
Notice of application for writ of certiorari	9	7
Order for writ of certiorari	10	7
Writ of certiorari	11	8
Return of comptroller to certiorari	13	9
Exhibit A—Evidence before commissioner	16	10
Testimony of John Clay	17	11
B—Evidence on rehearing	26	17
Objections of Parke, Davis & Co.	26	17
Testimony of John Clay	27	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 19, 1897.

	Original.	Print
Opinion of the general term	41	28
Order of general term	46	31
Notice of appeal of Parke, Davis & Company	47	31
Stipulation as to papers on appeal	48	31
Clerk's certificate to papers on appeal	48	32
Order for judgment on remittitur	49	32
Judgment	51	33
Petition for writ of error	54	34
Copy of writ of error	56	35
Copy of citation	59	36
Bond	61	37
Assignment of errors	64	39

a Court of Appeals.

PEOPLE *ex Rel.* PARKE DAVIS & COMPANY, Relator, Appellant,
vs.
JAMES A. ROBERTS, as Comptroller, &c., Respondent.

Papers on Certiorari on Appeal from Order of General Term Sustaining Comptroller.

James McKeen, attorney for relator, appellant, 32 Nassau street, New York city.

T. E. Hancock, attorney general, for respondent, capitol, Albany, N. Y.

b Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 9th day of June, in the year of our Lord one thousand eight hundred and ninety-six, before the judges of said court.

Witness the Hon. Charles Andrews, chief judge, presiding.

GORHAM PARKS, *Clerk.*

Copy.

Remittitur June 10th, 1896.

c THE PEOPLE *ex Rel.* PARKE DAVIS & COMPANY, Appellant,
ag'st
JAMES A. ROBERTS, as Comptroller, &c., Respondent.

Be it remembered that on the 19th day of May, in the year of our Lord one thousand eight hundred and ninety-six, The People *ex rel.* Parke Davis & Company, the appellant in this action, came here into the court of appeals, by James McKeen, its attorney, and filed in the said court a notice of appeal and return thereto from the order of the general term of the supreme court, third judicial department, and James A. Roberts, as comptroller, &c., the respondent in said action, afterwards appeared in said court of appeals by T. E. Hancock, attorney general, his attorney.

Which said notice of appeal and the return thereto filed as aforesaid are hereunto annexed.

d Whereupon the said court of appeals, having heard this cause argued by Mr. James McKeen, of counsel for the appellant, and by Mr. T. E. Hancock, attorney general, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the general term of the supreme court appealed from herein to this court be, and the same is hereby, affirmed with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

e Therefore, it is considered that the said order be affirmed with costs as aforesaid.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

GORHAM PARKS,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *June 10th*, 1896.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein, attached thereto.

[L. S.] GORHAM PARKS, *Clerk.*

1 New York Supreme Court.

In the Matter of the Application of PARKE, DAVIS & COMPANY for a Writ of Certiorari.

To the supreme court:

The petition of John Clay, as manager of Parke, Davis & Company, making this petition on behalf of such company as such manager, respectfully shows to the court:

That Parke, Davis & Company are a corporation created by and under the laws of the State of Michigan.

That said corporation is engaged in the business of manufacturing chemical and medicinal preparations from crude drugs and other materials by various processes, and in selling the products of this manufacture.

That its plant and machinery for such manufacture are at Detroit, Michigan, where substantially all its manufacturing is done.

That to facilitate the sale and distribution of its manu-
2 factured products in the eastern part of the country it has a warehouse and depot in the city of New York under the charge of your petitioner, and there keeps on hand varying quantities of its manufactured products, which are there sold at wholesale in original packages.

That all such products of its manufacture are consigned to your petitioner as such manager.

That the business of so selling such manufactured products is carried on in all respects like the ordinary sales of consigned goods, except that your petitioner is paid a salary instead of a commission, and the corporation do not conduct a jobbing business in purchase and sale of products other than of their own factory.

Though your petitioner does incidentally in his name import crude drugs in considerable quantities from foreign countries at

the port of New York, such crude products being in large part sent to the Detroit factory for use, but to some extent such crude drugs, and to a small extent crude drugs purchased in the New York market, are sold again, all such sales being in the original packages.

That a debit and credit account is kept by your petitioner with such corporation, and he accounts to them for the sales made at or through the New York office. A very large portion of such sales are made by traveling agents in States other than New York, in this section of the United States, the accounts thereof for convenience, being kept by your petitioner at the New York office. No bank account is or has been kept by the corporation in the State of New York, the only bank account being the individual account of your petitioner.

A large part of the sales made at and through the said New York office of the product of the said corporation's manufactory are made by sample, and the goods sold are delivered direct from the Detroit factory. Substantially the whole business of selling such products made by Parke, Davis & Company are conducted in that manner and the great bulk of goods actually kept on hand in New
3 York are so kept simply for convenience in making distribution to purchasers.

And your petitioner claims and alleges and verily believes that the only capital in any proper sense employed by such corporation in this State in the sale of its products is the leasehold of the depot in New York and the office furniture and fixtures, all of which do not and have not during the years hereinafter mentioned exceeded in value fifteen thousand dollars.

The petitioner further alleges, on information and belief, that said corporation, being a manufacturing corporation, is exempt from taxes under the provisions of the act, chapter 542 of the Laws of 1880, and the amendments thereof.

That nevertheless the comptroller of the State of New York, against the protest of your petitioner, assumed jurisdiction to impose a tax under said chapter 542 of the Laws of 1880, and on or about June 18, 1895, he settled the account against said company for the sum of one thousand five hundred and forty dollars for six years ending November 1, 1894, fixing as the amount of its capital for each of said years the sum of one hundred thousand dollars; and as a penalty the sum of one hundred and forty dollars.

That your petitioner thereafter duly applied under and pursuant to section 19 added to said act by chapter 463 of the Laws of 1889, asking the comptroller to revise and readjust the account settled against said corporation, which application was granted and your petitioner thereupon appeared before the comptroller, protesting, however, against his jurisdiction to impose any tax, and said comptroller thereafter and on or about August 20, 1895, took the following action upon such application for revision and resettlement, namely:

4 STATE OF NEW YORK:

COMPTROLLER'S OFFICE, ALBANY, *August 20th*, 1895.

In the Matter of the Application of PARKE, DAVIS & COMPANY for a Revision of Taxes Assessed against It under Chapter 542, Laws of 1880, and the Acts Amendatory Thereof.

An application having been made by the above-named Parke, Davis & Company, for a revision and resettlement of the taxes assessed and determined against it by the comptroller of the State of New York, for the six years ending November 1, 1894, and the said comptroller having heard the proofs offered on behalf of the said Parke, Davis & Company in support of said application, and after due consideration thereof, the comptroller does hereby determine that the assessment heretofore made against the said Parke, Davis & Company for the sum of fifteen hundred and forty dollars should be reduced to the sum of thirteen hundred eighty-six dollars: which said sum of thirteen hundred eighty-six dollars is hereby determined as the amount which said Parke, Davis & Company is liable to pay under the provisions of chapter 542, Laws of 1880, and the acts amendatory thereof, for the six years ending November 1, 1894.

JAMES A. ROBERTS,
Comptroller.

5 Vol. 12, page 147.

COMPTROLLER'S OFFICE, ALBANY, N. Y.

The Parke, Davis and Company, 90–94 Maiden Lane, N. Y. C. Jno. Clay, N. Y. mgr., in account with the State of New York, Dr.

For tax on franchise or business based on value of capital stock employed in New York State, per chapter 542, Laws of 1880, as amended by chapter 361, Laws of 1881; chapter 151, Laws of 1828; chapters 359 and 501, Laws of 1885; chapter 353, Laws of 1889, and chapter 522, Laws of 1890, for the 6 years ending November 1, 1894, as per report filed.

Appraised value of capital stock.....	$90,000 00
Tax 1½ mills, see statement herewith.....	1,386 00

Revised bill.

Statement.

Vol. 12, page 147.

COMPTROLLER'S OFFICE, ALBANY, N. Y.

The Parke, Davis & Company in account with the State of New York, Dr.

To what date.	Nature of report capital stock.	Amount taken.	Rate % div.	Mills.	Amount of tax.
1892.					
Nov. 1	4 years	$90,000	10	2½	900 00
1893.					
Nov. 1	1 year	"		1½	135 00
1894.					
Nov. 1	1 year	"	10	2½	225 00
			Penalty 10%		126 00
					1,386 00

6 Your petitioner further shows and represents, that such action of the comptroller in revising and resettling said account is erroneous and illegal for the reasons hereinbefore alleged, and in that if the statute be correctly interpreted by said comptroller as not exempting said corporation from taxes thereunder then said statute is unconstitutional and void as in contravention of the Constitution of the United States and the amendments thereof, and said comptroller has also erred, even if said statute be in all respects valid and constitutional, in erroneously assuming and deciding that goods manufactured by said corporation and stored and carried at its depot in this State, are or constitute capital employed in this State within the meaning of said act, and he has erred in not holding and deciding that the only basis for lawful imposition of a tax is only the capital actually employed in this State.

That unless relief is granted by this court the comptroller will issue his warrant for the collection of the taxes imposed, and compel said company to pay the same, to its great damage and loss.

Wherefore, your petitioner prays that a writ of certiorari may be issued out of this court, directed to the comptroller of the State, commanding the comptroller to return to such certiorari the accounts and all the evidence submitted to him on the application for revision and resettlement, to the end that if the original or resettled accounts shall be found erroneous and illegal by the court, either in point of law or of fact, the same shall be corrected and resettled, and such other and further relief be granted as may be just.

JAMES McKEEN,
Att'y for Petitioner.

STATE OF NEW YORK, }
City and County of New York, } ss.:

John Clay, being duly sworn, says that he is the petitioner above named; that the foregoing petition subscribed by him is true

7 to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

(S'g'd) JOHN CLAY.

Sworn to before me this 17th day of September, 1895.

HENRY F. SMITH,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

Supreme Court, State of New York.

In the Matter of PARKE, DAVIS & COMPANY for a Writ of Certiorari.

To the comptroller of the State of New York:

Whereas, the applicant above named has duly applied to the supreme court of the State of New York for a writ of certiorari to review the action of the comptroller upon an application made to him by Parke, Davis & Company for a revision and resettlement of accounts as provided in the act, chapter 542 of the Laws of 1880 and the amendments thereof, and resettling an account against said corporation for taxes and penalty amounting to thirteen hundred and eighty-six dollars.

And whereas, the papers required by law have been duly served upon the comptroller, and said corporation has duly deposited with the State treasurer the full amount of taxes, penalties and charges so settled and adjusted by comptroller.

8 Now we, John Clay, residing at number 928 President street, in the city of Brooklyn, county of Kings and State of New York, and William B. Kaufman, residing at No. 218 West One hundred and twenty-second street, in the city of New York, county and State of New York, hereby jointly and severally undertake, pursuant to the statutes in such cases made and provided, in the sum of one thousand dollars, that if said writ of certiorari be vacated and the determination of the comptroller sustained the applicant for the writ will make payment of all costs and charges which may accrue against such applicant in the prosecution of such writ, including costs on all appeals.

JOHN CLAY.
WM. B. KAUFMAN.

STATE OF NEW YORK, }
City and County of New York, } ss.:

John Clay and William B. Kaufman, the sureties in the foregoing undertaking, being duly and severally sworn say, and each for himself says: That they are freeholders within the State of New York, and each worth the sum of two thousand dollars over all the debts and liabilities which each owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

JOHN CLAY.
WM. B. KAUFMAN.

Sworn to before me this 17th day of September, 1895.

HENRY F. SMITH,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

(Endorsed:) The within undertaking is hereby approved as to amount and sufficiency of sureties. September 17, 1895. Edgar M. Cullen, J. S. C.

9 STATE OF NEW YORK, } ss.:
City and County of New York, }

On this 17th day of September, 1895, before me personally came John Clay and Wm. B. Kaufman, both known to me, and to me known to be the individuals described in and who executed the above undertaking, and severally acknowledged that they executed the same.

HENRY F. SMITH,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

Supreme Court, State of New York.

In the Matter of the Application of PARKE, DAVIS & COMPANY for a Writ of Certiorari.

To the comptroller of the State of New York:

Please take notice that Parke, Davis & Co. having made application for a writ of certiorari by petition, filed with the clerk of the supreme court, in and for the county of Albany, on the 18th day of September, 1895, upon said petition, a copy of which is herewith served, and upon undertaking herein filed with you, and the approval of a justice of the supreme court thereof, and the receipt of the State treasurer for the full amount of taxes, penalties and charges settled and adjusted by you against Parke, Davis & Co., I will move before the supreme court, at a special term thereof,
10 to be held at the court-house, in the city of Albany, on the 12th day of October, 1895, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, that the said application be granted and writ of certiorari be issued out of this court, commanding you to certify and return at the office of the clerk of the county of Albany, all and singular, your proceedings, decisions and actions in the premises, and all and singular the accounts, evidence, documents, records and papers before you concerning said matter, to the end that said decisions and accounts may be reviewed and corrected by this court, and I shall ask that in the meantime all further proceedings be stayed.

Dated New York, September 17, 1895.

JAMES McKEEN,
Att'y for Parke, Davis & Co.,
32 Nassau Street, New York City.

At a special term of the supreme court, held at the county court-house, in the city of Albany, on the 12th day of October, 1895.

Present: Hon. D. Cady Herrick, justice.

In the Matter of the Application of PARKE, DAVIS & COMPANY for a Writ of Certiorari.

On the petition of John Clay, manager of Parke, Davis & Company, verified September 17, 1895, filed September 18, 1895, the receipt showing that the full amount adjusted against the aforenamed company has been deposited with the treasurer of the State, and upon proof of the filing with the comptroller of the undertaking required by law and proof of due service of notice of this motion, now, on motion of Mr. James McKeen—

11

It is ordered, that a writ of certiorari be issued as prayed for in said petition to James A. Roberts as comptroller of this State, returnable within twenty days after service thereof to the office of the clerk of the supreme court in and for the county of Albany.

It is further ordered, that the execution of the determination of the comptroller and all proceedings for the collection of said tax be stayed until the final determination of the matters and questions arising upon said writ, or until the further order of the court.

JAMES D. WALSH, *Clerk.*

The People of the State of New York on the relation of Parke, Davis & Company to James A. Roberts, comptroller of the State of New York:

Whereas, we have been informed by the petition of John Clay as general manager of Parke, Davis & Company, and making his petition on behalf of said company, that on or about the 20th day of August, 1895, the said James A. Roberts as comptroller of the State of New York did, as such comptroller, assume jurisdiction to settle an account against Parke, Davis & Company, thereby deciding and determining that Parke, Davis & Company, were liable to pay the sum of one thousand three hundred and eighty-six dollars ($1,386) therein specified as and for taxes due and payable.

12

And whereas, it is alleged by the said relator that your proceedings were and are without jurisdiction and contrary to law, and that unless relief is granted by this court that you will issue your warrant for the collection of the taxes so imposed and compel the relator to pay the same to petitioner's great damage and detriment; and we being willing to be certified of your proceedings in the premises as such comptroller in imposing and exacting the said tax, and in all things relating thereto do command you to certify and return at the office of the clerk of the county of Albany, within twenty days after the service of this writ upon you, all and singular your proceedings and the accounts and all the evidence submitted to you in the said matter, in order that the same may be reviewed and said accounts be corrected and restated by this court.

Witness, the Hon. D. Cady Herrick, one of the justices of the

supreme court, at the court-house, in the city of Albany, on the 12th day of October, 1895.

[SEAL.] JAMES D. WALSH, *Clerk.*

13 Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* PARKE, DAVIS & COMPANY
against
JAMES A. ROBERTS, as Comptroller of the State of New York.

To the supreme court:

The return of James A. Roberts, as comptroller of the State of New York, to the certiorari granted herein, is as follows:

First. Since the first day of January, 1894, James A. Roberts has been, and still is, comptroller of the State of New York.

Second. At the several times hereinafter mentioned the relator was and still is a corporation organized pursuant to the laws of the State of Michigan, and was doing business and employed its capital stock in the State of New York, and was and is subject to taxation under the provisions of chapter 542 of the Laws of 1880, and the several acts amendatory thereof and supplemental thereto.

Third. The said relator, having failed and neglected to report to the comptroller of the State of New York, as required by law, the comptroller did, on the 6th day of May, 1895, appoint a com-
14 missioner to examine the books, records, officers, agents and witnesses of the relator, for the purpose of ascertaining the liability of said relator to taxation, and enable him to determine the amount of taxes the said relator was liable to pay. The said commissioner, so appointed as aforesaid, examined the books and affairs of the relator, and witnesses, and made a report to the comptroller. The evidence so taken is annexed hereto and marked "Ex. A." and made a part of this return.

Fourth. From the report made to the comptroller by said commissioner and the evidence transmitted, the comptroller did, on the 18th day of June, 1895, fix and determine the amount of tax and penalties the said relator should pay to the State, under the provisions of chapter 542 of the Laws of 1880, and the several acts amendatory thereof and supplemental thereto, for the six years ending November 1, 1894, upon the capital employed and business done in the State of New York, in the sum of $1,540, and did serve upon relator notice thereof.

Fifth. The relator, after the imposition of the tax, applied to the comptroller of the State of New York for a rehearing, and the same was granted, and the same was held on the 17th day of July, 1895, before the comptroller, and the evidence taken on said rehearing is annexed hereto and marked Exhibit B and forms a part of this return.

Sixth. Thereafter the comptroller of the State of New York after considering the evidence submitted to him, upon the rehearing for

the revision and resettlement of said tax, did make a determination with reference thereto, as follows:

15 "COMPTROLLER'S OFFICE,
ALBANY, *August* 20, 1895.

In the Matter of the Application of PARKE, DAVIS & COMPANY for a Revision of Taxes Assessed against It under Chapter 542, Laws of 1880, and the Acts Amendatory Thereof.

An application having been made by the above-named Parke, Davis & Company for a revision and resettlement of the taxes assessed and determined against it by the comptroller of the State of New York for the six years ending November 1, 1894, and the said comptroller having heard the proofs offered on behalf of the said Parke, Davis & Company in support of said application, and after due consideration thereof, the comptroller does hereby determine that the assessment heretofore made against the said Parke, Davis & Company, for the sum of fifteen hundred and forty dollars, should be reduced to the sum of thirteen hundred and eighty-six dollars; which said sum of thirteen hundred and eighty-six dollars is hereby determined as the amount which said Parke, Davis & Company is liable to pay under the provisions of chapter 542, Laws of 1880, and the acts amendatory thereof, for the six years ending November 1, 1894.

JAMES A. ROBERTS,
Comptroller."

Seventh. That the relator, during the years in question, was employing a large amount of its capital within this State, and
16 was not wholly engaged in manufacture within this State, and the tax so levied against it by the comptroller was and is valid in all respects, and the relator is liable to pay the same as and for capital employed by it within this State; that the relator was engaged in the sale of goods not manufactured by it within this State, and large sales were made of large quantities of goods annually. Business was carried on in this State by the relator and it employed its capital in such manner as to render it liable to taxation in this State.

All of the acts and proceedings on the part of the comptroller were valid, and the tax should be sustained.

All of which is respectfully returned.

In witness whereof I have hereunto set my hand this 30th day of October, 1895.

JAMES A. ROBERTS,
[SEAL.] *Comptroller.*

EXHIBIT A.

In the Matter of Taxation of PARKE, DAVIS & COMPANY under Chapter 542 of the Laws of 1880 and the Subsequent Acts Amendatory Thereof.

At the State offices, rooms 84 and 85, World building, New York city, before Commissioner Charles S. Wilbur, May 24, 1895.

James McKeen, 32 Nassau street, appears specially for Parke, Davis & Company and objects to any proceedings in this matter, on the grounds: First. That Parke, Davis & Company are a
17 manufacturing corporation and are within the exceptions named in the act. Second. That if the construction of the act, which had been intimated in certain dicta by the court of appeals, be that manufacturing corporations wholly engaged in manufacturing in this State are exempt, but that manufacturing corporations in other States and only partially here, or not at all, are not exempt, then the act is plainly unconstitutional. Third. On the ground that Parke, Davis & Co., is a manufacturing corporation, organized under the laws of Michigan, and does not, in fact, exercise any corporate franchises within this State, within the meaning of the act, or in such a way as to subject them to any taxation under the act.

JOHN CLAY, being duly sworn, testified as follows:

To the COMMISSIONER:

Q. What is your connection with this company?
A. Manager of the New York branch.
Q. And this company is organized under the laws of what State?
A. State of Michigan.
Q. When?
A. I cannot answer; I can furnish that, of course.

By COUNSEL:

Q. Prior to 1888?
A. Oh, yes.

By the COMMISSIONER:

Q. Have you been their agent for that length of time—since 1888?
A. Yes, sir.
Q. What is the authorized capital?
A. $1,200,000.
Q. All issued?
A. All issued.
Q. More than one kind of stock?
A. No, sir.
18 Q. Any bonds?
A. No, sir.
Q. What is the business of the company?
A. Manufacturing chemists.
Q. Where do they manufacture?
A. In Detroit, Mich.
Q. Do they do anything but manufacture and sell their own product?
A. No, sir.
Q. They do not in any way handle the product of any other manufacturer?

A. They do not, unless in a few individual cases where agencies are established.

Q. You make these preparations?

A. In this case of anti-toxine we were prepared, but it came forward so slowly that we accepted the agency of another concern that was up to the front.

Q. Do you manufacture in New York State?

A. Very little.

Q. How many offices and places of business have you in New York State?

A. Only one.

Q. Where is that?

A. 92–94 Maiden Lane.

Q What is the business of that office?

A. To distribute to their customers, who are better served through this Eastern point.

Q. Their manufactured product?

A. Yes, sir.

Q. Do they own any real estate in this State?

A. They do not.

Q. Do they own any stocks or bonds of any corporation in this State?

A. No, sir.

Q. Are they interested in the business of any individual firm or corporation in this State?

A. They are not.

Q. What rental do they pay?

A. $12,500.

Q. What is the average amount of merchandise stock on hand?

19 A. I don't know how to answer that.

Q. Approximately?

A. Say fifty thousand dollars.

Q. Do you keep any other but your manufactured product?

A. We do; we keep crude drugs.

Q. You deal in these also?

A. We do.

Q. And these are imported here into New York?

A. They are imported into New York mostly.

Q. What is the value—the average amount of such merchandise?

A. Approximately, $50,000.

Q. That is in addition to the $50,000 of manufactured goods?

A. Yes, sir.

Q. What is the value of your personal property, outside of your merchandise stock, office furniture, fixtures, horses and wagons, personal property of any kind?

A. Office furniture and fixtures, there being no other personal property, I would place at $15,000. You can understand it is an estimate.

Q. Does the company keep a bank account?

A. It does not.

Q. Where is the bank account kept?
A. In Detroit.
Q. Do you keep an account for the company?
A. I do not keep an account for the company because my position is, in every sense, that of a commission merchant, except that instead of receiving a commission I receive a salary; therefore the bank account is kept in my own individual name.
Q. And such account, as agent of this company, averages what—monthly bank balance?
A. At the extreme, $10,000.
Q. What is the salary and pay-roll account of this office?
A. That is a matter of expenses; that is the entire expense account.
20 Q. That includes everything in the way of rentals, and so forth?
A. Everything.
Q. What does that amount to?
A. For the year 1894, about $175,000.
Q. That covers, however, your rental and all expenses?
A. Yes, sir; salaries.
Q. It goes for salaries, chiefly, I suppose?
A. Yes, sir; rentals and salaries and the running expenses of the store.
Q. Will these figures, in round numbers, that you have given me, hold good, substantially, since 1888?
A. No; they would very rapidly decline from year to year.
Q. They would decline from 1888?
A. They have been advancing from 1888. The goods are sent here for sale, consigned to me absolutely; a debit and credit account kept by me.
Q. What was the dividend made and declared for the year 1889?
A. Ten per cent.
Q. 1890?
A. Ten per cent.
Q. 1891?
A. Ten per cent.; that is the dividend of each year, except 1893, when a five per cent. dividend was paid.
Q. You say these goods are all consigned here?
A. They are.
Q. The goods manufactured by this company in Detroit?
A. Yes, sir.
Q. The imported goods, in bulk?
A. In bulk.
Q. Are they consigned goods?
A. They are bought and dealt in by myself.
Q. Then these figures that you have been given me, are the figures of your individual business, and not that of Parke, Davis & Company?
21 A. Prior to the year 1881, Parke, Davis & Co. consigned their manufactured goods to a wholesale drug concern in this city, Lane & Finck; and believing that if they consigned to

some one whose individual attention would be given them, the business could be enlarged, they instructed me to open a store here in New York, take over the consigned goods that Lane & Finck had carried and care for their interests myself, thereafter nominating me manager of the New York office; and a consignment account was opened and was so carried on their books. I am held responsible for the material sent me and for all moneys received; and as I view it, am in every way acting as a commission merchant in the matter, other than that I receive a salary, instead of a commission. I want to get this explained to you.

By COUNSEL:

Q. Do Parke, Davis & Co. buy and sell in New York, leaving out of account what has been referred to by you as crude drugs, any merchandise, other than as you sell for them, the product of their own Michigan factory?

A. They do not.

Q. Have they ever kept as a corporation, any bank account here?

A. No.

Q. The goods that are consigned to you from Detroit, are sold, some of them, by you in this market, are they not?

A. Yes, sir.

Q. And an account is kept by you with Parke, Davis & Co., at Detroit, in which you are charged with the proceeds of sales?

A. Yes, sir.

Q. And do they draw upon you?

A. They draw upon me.

Q. And the drafts drawn by them are drawn upon you, individually?

A. Upon John Clay.

22 Q. Will you state if, at the time business began, of your importing crude drugs, was there any conversation between you and the officers of Parke, Davis & Co., as to your importing crude drugs here, in reference to the relations of the corporation to that business?

A. I had lived abroad for a good many years, prior to taking matters in hand here and had a very broad familiarity with foreign markets. I found that they were using very largely and increasingly, crude drugs imported from foreign countries, and knowing that from my close acquaintance there, facilities would be given, I asked consent to enter into the importation of these crude drugs from abroad, not only for their own use, but in excess of their use and for the purpose of offering them in original packages to the open market. They replied that the capital of the concern was entirely needed for the conduct of their manufacturing business; that I might do as I wished, if I would not call upon them for a dollar of investment; so as all this material was sold from abroad on long time, I commenced to order in excess of their wants, and by turning over these cases on our shorter terms of sale in this country, found that a fund was accumulating that I kept investing in that form, and they never had put one cent of their capital in it.

By the COMMISSIONER:

Q. But they own it, however?
A. Certainly.
Q. The profits of that part of the business go to them?
A. Yes, sir.

By COUNSEL:

Q. But the title is all in you; the goods are imported altogether by you?
A. Altogether; the title is in me.
Q. And you account to them for the sale of these crude drugs?
23 A. I account to them for the profits of this business, but no capital was ever invested.
Q. Are the goods that are imported by you and also the goods that are consigned to you from abroad, which are sold here, sold in the original packages?
A. With very few exceptions.

By COMMISSIONER:

Q. Do they come addressed to you?
A. Yes, sir; John Clay.

By COUNSEL:

Q. Was this method of doing business that you have described resorted to or adopted with any view whatever to any liability to tax?
A. No, sir; we were not conscious of such liability.
Q. You do, I believe, incidentally, in the crude-drug department, occasionally make purchases in this market?
A. We do.
Q. But the great bulk of both these purchases and of the imported crude drugs which are imported by you—purchased by you—are sent by you to Michigan, to be there worked up into manufactured products?
A. Yes, sir.
Q. But you do in some instances and incidentally sometimes make sales in this market of crude drugs that have been purchased here?
A. We do.
Q. Will you please state the amount of goods, crude drugs, that you purchase here and that you sell here, excluding the merchandise that you ship to Detroit?
A. The amount of goods in New York State, for resale and re-sold—

1889	$32,416 87	1890	$23,670 51
1891	37,269 62	1892	40,915 78
1893	62,752 28	1894	34,234 06

24 Q. Do these figures that you have last given represent the total amount of property that, in any sense of the word,

whether we hold that you are acting individually, or in the sense as agent of Parke, Davis & Co., the total amount that you turn over in this market?

A. Yes, sir.

Q. Is it true that all the rest of the transactions are wholly either purchases here made simply for manufacturing purposes in Detroit, or importations made and disposed of in the original package, or sales made of goods consigned from Detroit to you?

A. Yes, sir.

Q. Have Parke, Davis & Co. ever held any corporate meeting of any kind in New York?

A. Never.

Q. You were asked some questions as to the character of their business; won't you describe more fully what the entire business is, as carried on by Parke, Davis & Co.? You said they were manufacturing chemists; won't you kindly describe a little the general character of the way the factory is conducted, as to working up raw material?

A. We would be more strictly described as manufacturing pharmaceutical chemists, which means that crude material is taken and by certain processes brought into a more convenient form for administration as medicine; so fluid extracts are made from bark, or roots or seeds, and solid extracts are made from the same. Certain alkaloids are extracted from the crude material; pills are thus made.

Q. I understand you to say that you do not do any jobbing business whatever, in Detroit?

A. No, sir.

Q. The business is entirely confined to the conduct of the factory and the sale of the products of their own factory?

A. Absolutely.

Q. Are the goods that are sent to you from Detroit for sale here sold here by you in the original packages?

25 A. Yes, sir.

Q. Entirely so?

A. Pretty nearly.

Q. And the exceptions are merely trivial?

A. Merely trivial.

Q. Is the account kept between you and Parke, Davis & Co. a debit and credit account?

A. A debit and credit account.

Q. I believe the lease of the store is in the name of Parke, Davis & Co., or is it in your name?

A. I cannot definitely answer; I find I have not a copy of the lease in my safe.

Q. You pay the full rental for the premises—all they are worth?

A. Yes, sir.

Q. The lease has no value?

A. In my estimation, no.

Q. Do these office fixtures belong to Parke, Davis & Co.?

A. They do.

Q. Unless it be the office fixtures and the leasehold, do Parke, Davis & Co. own any property in the State, as far as you know?
A. Not that I am aware of.
Q. Other than the goods consigned?
A. Other than I have described in my testimony.

(Witness submitted the following figures:)

Sales. City. 1890, $259,925.85. 1891, $316,561.84. 1892, $330,860.38. 1893, $355,402.62. 1894, $358,417.97.
Country. $225,089.74. $248,076.01. $278,190.23. $263,892.03. $294,004.01.
Total. $482,915.57. $564,637.85. $607,050.61. $619,094.85. $652,421.98.

City account (same years).

Annual net expenses. $86,810.79. $110,608.73. $133,785.03. $131,625.51. $147,171.99.
Inventory. $79,288.67. $76,841.84. $101,155.78. $91,629.77. $108,478.04.

26 Crude drug (1889 to 1894, inclusive).

Annual sales of which to Parke, Davis & Co., Detroit. $200,568.78. $242,227.18. $252,677.45. $320,896.34. $295,332.22. $345,667.55.
$50,771.14. $72,428.74. $67,485.98. $85,558.74. $59,151.79. $145,179.11.
Resold. $149,797.64. $169,798.44. $185,191.47. $235,337.60. $236,180.43. $202,488.44.
Expenses. $18,147.20. $17,635.40. $21,540.35. $19,295.24. $24,273.40. $24,680.98.
Inventory. $78,254.88. $64,635.82. $41,737.52. $46,201.66. $53,296.28. $60,302.85.

EXHIBIT B.

STATE OF NEW YORK, }
Comptroller's Office. }

In the Matter of the Application of PARKE, DAVIS & COMPANY for a Revision and Readjustment of the Taxes Assessed against It by the Comptroller.

Rehearing held at the State comptroller's office, Albany, N. Y., July 17, 1895, before Hon. William J. Morgan, deputy comptroller.

Mr. James McKeen appeared for the company.

Mr. MCKEEN: I object on behalf of Parke, Davis & Company that there is no jurisdiction to impose a tax under the act,
27 and that the tax, as fixed and adjusted heretofore, is erroneous, on the ground that—

First. That the Parke, Davis & Company are a manufacturing corporation, and are within the exceptions named in the act; and,

Second. That if the act be construed as imposing a liability on the ground that this corporation is not wholly engaged in manufacturing in the State of New York, it is clearly unconstitutional as a discriminating tax.

Third. On the ground that Parke, Davis & Company had not exercised any corporate franchises in this State within the meaning of the act; and the comptroller is asked upon this rehearing that should he overrule the objections to the extent of holding that there is a liability, that the account against the corporation should be readjusted, and in case he should hold that, so far as any capital is employed in this State in the conduct of the business, the only capital so employed that can be made the measure of any tax under the act is the capital continuously employed, and he has erred in assuming that the stock of goods carried here is capital in the State.

JOHN CLAY, being duly sworn, testified as follows:

Examined by Mr. MCKEEN:

Q. Mr. Clay, will you please state what relation you sustain, if any, to Parke, Davis & Co.?

A. I am manager of the New York office.

DEPUTY CONTROLLER:

Q. Member of the firm?

A. It is a corporation.

Mr. MCKEEN:

Q. Where is your factory located?

A. In the State of Michigan.

Q. And what is the business for which it is incorporated?

28 A. Manufacturing pharmacists—manufacturing chemists.

Q. Where is the bulk of its business carried on?

A. Detroit, Michigan.

Q. Will you please describe briefly how that business is conducted at Detroit by the company, what it does—actually does?

A. We prepare certain chemical compounds and pharmacists' preparations by taking the crude material and by various processes bringing it into a more concentrated form for convenience for using for medicine, such as food extracts and solid extracts, and compounds of that character.

Q. What business, so far as the products of the factory are concerned, is conducted in New York by you—I refer to the manufactures at Detroit?

A. You mean how is it conducted?

Q. Yes; what you do in New York?

A. I am there practically as an agent. They consign to me there the manufactured products of our laboratory in form for delivery to the trade, and for convenience a stock is carried there for ready

circulation—orders received, packed and shipped to various parties; is that what you want?

Q. Yes. Do you do in New York any jobbing business of any description in the matter of manufactured articles of other parties?

A. Practically none.

Q. Will you state how the business was conducted prior to the present arrangement under which you act as manager in New York—how did Parke, Davis & Co. perform it?

A. Prior to the opening of our store they were consigned to a wholesale drug concern in New York city named Finck and by them sold on commission.

Q. And what led to the change that was made? To what extent was the change made?

A. The change was made for the reason that they being general dealers, could not give as careful attention to any one particular line of merchandise that it would receive with proper care,
29 thereby keeping the business, so far as they are concerned, dwarfed. The commission agency was taken from this firm of Lane & Finck, and this depot opened up, and I was appointed there as their agent that there might be definite attention given entirely to the matter.

Q. Are those goods sent to you by the firm at Detroit?

A. Yes, sir.

Q. And in the matter of making sales, how is it as to the course of the business in making sales and accounting for sales in New York?

A. It is divided into two sections, that is to say, the country trade and the city trade. The city trade covers certain territory merely surrounding New York, and the customers in that section have their accounts carried upon my ledger there in New York. For the country trade the orders come to me there as their agent and are by me shipped to them; the invoices are sent to Detroit and charged on their books and the accounts are collected by them.

Q. And is a debit and credit account kept between you individually and Parke Davis & Co.?

A. Yes, sir.

Q. And they draw on you for the proceeds or you remit to them the proceeds, and account to them for the proceeds of all sales?

A. Yes, sir.

Q. Is that done precisely as in the case of any ordinary consignment account, with the exception that you are paid a salary, instead of a commission?

A. With the exception that I am paid a salary instead of a commission.

Q. And it has appeared that you, in connection with the business as you have described it, carry on, to some extent, what you have described as crude-drug department. Will you please state how that business originated, and what the general character of that business is?

A. Prior to entering the service of the Parke Davis Company I

lived abroad for a great many years and had a thorough fa-
30 miliarity with the markets of foreign countries, and it oc-
curred to me that by using such information I might be able to add to the business an importing business by bringing over these crude drugs in excess of what would be required for the use of our laboratory and selling the rest in the general market, thus making a large buyer of those goods. I applied to the concern for their consent, and they said I might do as I wished in that direction, but that they would not invest a dollar of capital.

Q. That company has never invested any capital in that business?

A. Never. They never put in one dollar into what we term the crude-drug department.

Q. And are all these importations in crude drugs made by you individually?

A. Yes, sir; to John Clay.

Q. And the title is, of course, in you?

A. The title remains in me.

Q. Did Parke, Davis & Co. ever keep any bank account in New York?

A. Never have and don't.

Q. Was any arrangement—was anything done in the nature of the arrangement of this business with any idea of evading in any way, any liability to taxation?

A. No, sir.

Q. Now, you have stated that you estimate for the years since 1890, on an average, that you carry of goods made by Parke, Davis & Company, at the New York office, about $50,000. Will you state how, and in what way, and for what reasons the stock of goods is carried in New York?

A. For convenience in delivery—to save time to our customers.

Q. In other words, state whether the entire sales that are made at the New York office would be made substantially the way that they are now made without carrying any stock there?

31 A. A large proportion of the business would be done in that form.

Q. That is the business would go on just as it now goes on, by making sales of merchandise in New York, and having shipments from the factory at Detroit?

A. Already, it is largely done in that way, outside of the stock we carry.

Q. You also stated that on any average during the same years, you have generally had in New York of crude drugs that you have imported an average stock of about $50,000. Will you state what the course of business is in connection with the importation of crude drugs? Are they imported and sold in the original packages?

A. They are imported and sold in the original packages.

Q. Is the same thing true of the sales made of shipments made from Detroit?

A. Yes, sir.

Q. State whether or not, a very large portion of the crude drugs

imported by you are shipped directly to Detroit for consumption in the factory there?

A. It is true.

Q. I believe it has appeared in connection with the carrying on by you of this importation of crude drugs, that you did make some purchases of raw material in New York?

A. It is true.

Q. That is the company, isn't it?

A. Yes, sir.

Q. Have you examined the books so that y are able to state for the series of years since 1890 what amount of capital is used by you in the State of New York in that business? That is, the amount of continuing capital that has been used in these years?

A. Yes.

Q. Will you give those figures?

32 A. I have a table prepared by the book-keepor; that is what you want, I suppose?

1889	$32,416 87
1890	23,670 51
1891	37,269 62
1892	40,915 78
1893	62,752 28
1894	34,234 06

DDPUTY COMPTROLLER: This is the amount of money that is invested in this foreign drug business? That is the amount of money that has been used in the conduct of that business in the State of New York in the purchase and sales—the investment in the State of New York business?

A. Not applied to that whatever.

Mr. MCKEEN:

Q. As a matter of fact, will you state as to the conduct of this importing business by you—the whole of it—as to how it happens that it doesn't involve any actual use of capital—the importing business?

A. From the fact that in purchasing those lines abroad, the credits are long—in selling in this country, the credits are short. By that means it develops its own capital after investment.

Q. The goods are handled on credit?

A. Principally.

Q. Now, in making the sales of the products of the Detroit factory in New York, is any capital employed in the State beyond the office and furniture?

A. No, sir.

Q. Does the corporation—Parke, Davis & Co.—own any real estate in New York State?

A. None.

Q. They pay rental, I suppose, on the city warehouse?

33 A. They do.

Q. Is that a rental from year to year?

A. It is a lease.
Q. Has the lease any value as a leasehold?
A. Not that I am conscious of.
Q. You couldn't sell it so as to get any higher rent from a tenant?
A. I don't think I could.
Q. Do you own any wagons—that is, the corporation?
A. It doesn't.
Q. What is the value at the outside of the property that they own, that they use in carrying on the business? I refer to the desks, and safes and furniture.
A. Well, I estimate again roughly at $15,000—the furniture, desks, &c.
Q. That, in your judgment, is an outside figure of all the property that is employed in the State of New York in the conduct of the business?
A. That is for conducting the offices and building.

DEP. COMPTROLLER:

Q. You said you were the general manager of the Park Davis Company's business in New York?
A. Yes, sir.
Q. Their store is located where?
A. 90, 92 and 94 Maiden Lane.
Q. Have you a warehouse in addition to the storehouse?
A. No.
Q. And your business is done in the store in Maiden Lane?
A. Yes, sir.
Q. How much of a store is it?
A. 74 ft. front by, I think, 90; something like that.
Q. How much rent do you pay?
A. $12,500 a year.
Q. How much of a force have you?
A. Fifty-odd, I think.
Q. Fifty-odd people?
34 A. Yes, I think so.
Q. Are you under salary?
A. Yes, sir.
Q. What is your salary?
A. $8,000.
Q. A year?
A. Yes, sir.
Q. What does your pay-roll amount to outside of this, or including yourself?
A. I think I have a memorandum here. Well, it is in the shape of expenses, including the rent, salaries, &c.
Q. That will do. State what is included, and then give the total amount.
A. The entire expenses of conducting the branch.
Q. That includes your salary?
A. Yes, sir. What do you want, an average as nearly as possible of this series of years.

Q. Average the whole period, or else give it for the individual year.

A. Let me answer your question in this form then. The total amount of expenses was not far from in

1890	$102,000
1891	128,000
1892	155,000
1893	151,000
1894	172,000

Q. Now, then, state in detail as to what you mean by total expenses.

A. Salaries of employees, rentals, insurance, my salary, repairs, &c.

Q. You speak of having a city and a country trade. Do you have traveling agents in the country, throughout the State, where you sell outside of the city of New York?

A. Yes, sir.

Q. How many agents have you?

A. I think the last report was 100 or 104 men.

Q. Are they on the road?

35 A. On the road.

Q. Are they included in this pay-roll?

A. They have no connection with this department even, unless a few of them. I don't believe that their expenses would appear under this caption. I believe it would not.

Q. Where are the others paid from?

A. Detroit; from headquarters.

Q. Employed directly from the headquarters of the concern?

A. All of them are employed——

Q. Traveling in this State selling those goods?

A. All are employed from the Detroit office.

Q. Those goods are delivered where they sell them?

A. Yes, sir; partly from the New York office and partly from the home office.

Q. You stated that you carry a stock of goods in New York at your Maiden Lane store, on an average of $50,000, does that mean on an average for this term of years?

A. Yes, sir.

Q. Have you any goods on sale elsewhere throughout the State?

A. No.

Q. Then all the goods that belong to Parke, Davis & Co. are held by you in New York?

A. That is right.

Q. State in detail the method of doing that business. They ship to you as their agent, consign the goods to you?

A. Yes, sir.

Q. You receive the goods in the store at New York, and have them on sale there?

A. Yes, sir.

Q. And when you deliver them as the agent of Parke, Davis & Co.?

A. That is right.

Mr. MERRILL: Do you hold any financial securities in any other corporation here in this State?

A. No, sir.

36 Q. About your bank balance—whose bank balance is this?

A. John Clay.

Q. Whose money is it?

A. Parke, Davis & Co.

Q. What is the amount of it on the average?

A. About $10,000.

DEPUTY COMPTROLLER:

Q. For this period of years?

A. I should judge so.

Q. That is your best judgment?

A. Yes, sir; not beyond that.

Q. In regard to this crude-drug business, that is conducted in whose name?

A. Parke, Davis & Co., so far as sales are concerned.

Q. As regards the importation?

A. John Clay.

Q. John Clay is the buyer abroad?

A. John Clay is the buyer abroad and receives the goods. John Clay is drawn upon from abroad to pay for them; they are insured in the name of John Clay.

Q. And who receives the profits from the business?

A. Ultimately, what remains, goes to Parke, Davis & Co.

Q. The fact then, of doing the business in the name of John Clay, is simply a convenience?

A. The facts are as I gave them to you. It grew up in that form.

Q. How much of a business of that crude-drug line did you do during the years in question?

A. Over and above what was sent to the laboratory at Detroit, for their use, our sales in the open market for that period, were as follows:

1890	$169,798
1891	185,191
1892	235,937
1893	236,180
1894	202,488

37 Q. These sales are made in the open market, and regardless of what you send to the laboratory in Detroit?

A. Yes, sir.

Q. How much have you sent on the average to the laboratory in Detroit?

1890	$72,428
1891	67,485
1892	85,558
1893	59,151
1894	143,179

Q. These goods are bought by you on account of Parke, Davis & Co., and received in New York, and shipped directly to Detroit for use there?

A. These goods are bought by me in the same way that all other goods are bought abroad; and I fill their orders for crude drugs the same as I would for any other concern in the country, charging them the same price as any stranger.

Q. And the profits that accrue from the business that is done with other people in this crude-drug line finally goes to Parke, Davis & Co.?

A. Ultimately, as soon as I am released from responsibility.

Q. Do you have any stores separate from the one you have described, for this business?

A. We don't.

Q. It is done in the same store with the Parke, Davis & Co.'s business?

A. Yes, sir.

Mr. MERRILL:

Q. Mr. Clay, what proportion of these crude drugs have you purchased in the open market in the State of New York?

A. I think I have given that testimony before.

Q. What portion of these drugs of the whole lot?

A. It is the same figures that you have already.

1890	$23,676 51
1891	37,269 62
1892	40,915 78
1893	62,752 28
1894	34,231 06

38 Q. How often do you turn these drugs over, that is, the money that is invested in them?

A. I can't tell you.

Q. Approximately?

A. I can't answer the question. It is impossible for me to do it.

Q. Do you turn them over once a month?

A. No. They represent the entire purchases made in New York State during the entire year.

DEPUTY COMPTROLLER:

Q. Mr. Clay, you stated those figures are the same as you gave already; what figures are those? What do you mean?

A. It had reference to the amount of business we had done in the State.

Q. What business were you talking about then? You stated there that these were the importations.

A. No, sir; it doesn't refer to that.

Q. Those are goods that you buy in the New York market?

A. Yes, sir; for resale.

Q. Those goods that you import, do you sell them? First of all, how do they come to you?

A. Bales, boxes and barrels.

Q. Then you take them out of these bales and boxes and put them on the shelves?

A. You are speaking of the importing?

Q. Yes.

A. No, we sell in the original packages.

Q. In the bales?

A. Yes, sir.

Q. And in the boxes?

A. Yes, sir.

Q. Without breaking at all?

A. Yes, sir.

Q. Just as it comes from the ship?

A. Yes, sir; with exceedingly few exceptions.

Mr. MERRILL:

Q. Can you give us an answer to that question? Do you turn it over once a year (referring to a previous question by Mr. Merrill)?

A. I suppose I do; but I confess to you I don't know how to answer the question.

39 Mr. MCKEEN: Mr. Clay, you have been asked about the imported drugs, and have stated, with very few exceptions, they are sold in the original packages. To what extent in value do these exceptions go? How trifling is that?

A. Oh, it is infinitesimal.

Q. Now, you have been asked to state the expenses of conducting this business, and have given figures which represent the expense of this New York office. Do these expenses cover the conduct of the business in this general section of the country, irrespective of the city of New York?

A. Yes, sir.

Q. And it is a fact, isn't it, that what you have designated as the New York branch of Parke, Davis & Co. is carried on by you over a large tract of Eastern territory, including a great number of cities other than New York?

A. Yes, sir.

Q. And it is true, isn't it, that the sales you have given of drugs imported in the original packages includes sales made in a great many Eastern cities outside of New York?

A. It includes every city in the Union, and also goods that we export.

Q. Now, other than the figures that you have given as representing purchases made of drugs in this market and resold here, are

any of the proceeds of the sales made by you reinvested here for further and other business?

A. No.

Q. Is it or is it not, a fact that all other proceeds than those you have given as representing purchases made here, are remitted or accounted for by you to the Detroit headquarters of the corporation?

A. After paying current expenses—working expenses—it is a fact.

Mr. MERRILL:

Q. Mr. Clay, you made some dividends along during this period; will you please state what the dividends were for those years.

A. Semi-annual 5 per cent. dividends.

Q. Then for each of those years 10 per cent. dividend, except one year?

A. Yes, sir; then it was five. I think it was in 1893, the year of the depression.

DEPUTY COMPTROLLER:

Q. How much is the company capitalized at?

A. It is capitalized at $2,000,000—$1,200,000 we paid in—$1,200,000 issued. The authorized capitalization is $2,000,000.

Mr. MCKEEN:

Q. At the time you engaged in this crude-drug business that you have described, was it or not a subject of consideration with the corporation as to their entering upon that as a corporation?

A. There was.

Q. What was the decision about it?

A. That I must undertake it, if at all, without calling upon them for a dollar's worth of aid.

Q. Is their corporate charter exclusively for the manufacture and sale?

A. Exclusively for the manufacture and sale.

DEPUTY COMPTROLLER:

Q. Manufacturing and sale; by that you mean the sale of the manufactured product?

A. I answered the question according to the wording of our charter. The charter reads: "For the manufacture and sale of," &c., &c.

41 Supreme Court, General Term, Third Department.

Mayham, P. J., Putnam and Herrick, JJ.

ALBANY, *December*, 1895.

PEOPLE *ex Rel.* PARKE, DAVIS & COMPANY
against
JAMES A. ROBERTS, Comptroller.

James McKeen, for relator.

T. E. Hancock, attorney general (C. D. B. Hasbrouck, deputy attorney general, of counsel), for respondent.

HERRICK, *J.*:

This is a proceeding to review by certiorari the decision of the comptroller of the State in assessing and levying a corporation tax upon the relator.

The relator is incorporated for manufacturing purposes under the laws of the State of Michigan, and is engaged in the business of manufacturing preparations for pharmacists and chemists. Such manufacture consists in the preparation of chemical compounds and pharmacists' preparations, by taking the crude materials and by various processes producing them in a concentrated form, convenient for using for medicines, such as fruit extracts and solid extracts. The factory is situated in the city of Detroit, Michigan.

Prior to the years for which the relator has been taxed by
42 the comptroller, the relator shipped its products in unbroken packages to a wholesale drug concern in the city of New York, which sold the same upon commission. The house to which it consigned its goods did not give its exclusive attention to the sale of relator's merchandise, but was a general dealer. For the purpose of having exclusive attention given to its line of goods, the relator changed its method of doing business, and selected a person named Clay to whom it consigned its products. There is a debit and credit account between them of the goods received by him, and of the amount sold. He remits the amount of sales made, and receives from it a stated salary; he is not paid by commission; a stock of its products is always kept on hand by him; stores are leased and clerks employed at its expense. Such expense ranged from $102,000 in the year 1890 to $172,000 in the year 1894, which includes salaries of employees, rentals, insurances and repairs.

The orders received in New York city and its immediate vicinity are supplied from this store, or headquarters in New York city. Orders received in what is known as the country districts, that is in places at considerable distance from New York city, are filled by transmitting such orders to the home establishment at Detroit, Michigan, and the goods are shipped direct from the factory there to the persons ordering them.

The stock carried in the store in New York city is of the average amount of $50,000. Mr. Clay also purchases crude drugs in Europe, which he imports to this country, through the port of New York. A portion of such importations are sent to the home establishment

at Detroit, and another portion is sold from the New York store. Purchases of crude drugs are also made by him in New York; some are shipped to Detroit, and some sold in New York city.

These goods are purchased upon the credit of the relator; it invests no cash in their purchase.

43 It is contended by the relator that Mr. Clay is not its agent, that he is carrying on an independent business in its drugs, and stands in the same relation to it as any merchant in such city, purchasing its drugs, or of a commission merchant to whom it should consign goods to be sold upon commission, and that therefore it should not be taxed as a corporation doing business in this State.

Without entering into any discussion as to what constitutes the relation of principal and agent, it seems to me very clear that Mr. Clay is in fact the agent of the relator. The rent of the establishment from which its drugs are sold in New York city is paid by it; it pays the insurance, taxes and repairs; it pays the salaries of the various employees engaged in conducting the business there.

It keeps a stock of its goods to a large amount at the store in New York city. Charging the goods to him, and keeping a debit and credit account between itself and Clay, is simply a convenient way of keeping an account of its transactions with its New York city branch. That is its distributing agency in the State of New York.

The goods that are purchased by Mr. Clay in Europe are purchased upon its credit. The entire proceeds of the sales in New York city are transmitted by Clay to the relator; he is paid a stated compensation, which is not dependent upon, or measured by, the amount of the sales or of the profits. He appears to be simply its representative, managing and conducting its business in the city of New York for and on its behalf.

But relator further contends that assuming that Clay is its agent, that it is carrying on a manufacturing business, that the sale of its products are a necessary incident to the manufacturing business, and that if it was incorporated under the laws of the State of New York, and doing business here, it would at least to the extent of the products of its own manufacture, be exempt from taxation within the case of The People *ex rel.* Tiffany & Co. *vs.* Campbell, 144

44 N. Y., 166, and at most only be taxable upon the business that it transacts in goods other than those manufactured by itself; and it claims that under article 4, section 2, of the Constitution of the United States, providing that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," it should be permitted to do business upon the same footing as domestic corporations wholly engaged in manufacturing, and if taxed at all, should only be taxed upon that business which is carried on by it outside of its corporate powers, as was done in the Tiffany case.

We do not think that this last contention can prevail.

The right of citizens to associate themselves together and do business as a corporation, is not a natural or inherent right, but is a special privilege, granted by the sovereign power; and a privilege

so granted cannot be exercised in a sovereignty other than that granting it, except by comity; to hold otherwise, would extend the power of such sovereignty beyond its territory, and give to its laws ex-territorial force and effect.

Again, corporations are not citizens within the meaning of that clause of the Constitution relied upon. "The privileges and immunities secured to citizens of each State in the several States by the provision in question, are those privileges and immunities which are common to the citizens in the latter States under their constitution and laws, by virtue of their being citizens. Special privileges enjoyed by citizens in their own States are not secured in other States by this provision. It was not intended by the provision to give the laws of one State any operation in other States. They can have no such operation, except by the permission, expressed or implied, of those States. The special privileges which they confer must, therefore, be enjoyed at home, unless the assent of other States to their enjoyment therein be given."

Paul *vs.* Virginia, 75 U. S., 168.
People *vs.* Imlay, 20 Barb., 68-80.

45 The right of the State to exclude foreign corporations has been repeatedly adjudicated upon, and is well settled.
People *vs.* Fire Association, 92 N. Y., 311.

The right of a corporation, incorporated in a foreign State, to do business in this State, being dependent upon the assent of this State, it may impose such reasonable terms and conditions upon such assent as it deems proper. It is unnecessary to cite authorities to show that a tax upon that privilege of doing business here, measured by the amount of its capital stock employed in such business, within this State, is one entirely within its power. Establishing a place for the sale of its goods within this State, paying rent therefor, hiring and employing agents and employees to conduct such business, selling its products from such place, is transacting business within this State, seems to me can admit of no question. That a business so conducted and carried on is not interstate commerce, which will prevent the corporation carrying it on from being taxed, has been held in the case of The People *ex rel.* S. C. O. Co. *vs.* Wemple, 131 N. Y., 64.

The writ of certiorari should therefore be quashed, and the decision of the comptroller affirmed, with fifty dollars costs and disbursements.

I concur.
S. L. H.
I concur.
J. R. P.

46 At a general term of the supreme court of the State of New York, held in and for the third judicial district, at the city hall in the city of Albany, N. Y., the 28th day of December, 1895.

Present: Hon. Stephen L. Mayham, P. J.; Hon. John R. Putnam, Hon. D. Cady Herrick, associate justices.

PEOPLE OF THE STATE OF NEW YORK *ex Rel.* PARKE, DAVIS & COMPANY, Relator,
vs.
JAMES A. ROBERTS, as Comptroller of the State of New York, Respondent.

This cause having been heard at the term of this court commencing December 3, 1895, upon the writ of certiorari herein, and upon the return of the defendant hereto, and after hearing James McKeen, of counsel for the relator, and Hon. G. D. B. Hasbrouck, deputy attorney general, of counsel for the defendant,

Ordered, that the proceedings of the defendant as comptroller of the State of New York, in assessing and imposing a tax upon the relator and settling an account therefor for the six years ending November 1, 1894, at the sum of $1,540, as specified and set forth in said writ of certiorari, be and the same hereby are in all respects confirmed, with $50 costs, and $7.69 disbursements; in all, $57.69.

J. M. BOTHWICK, *Clerk.*

47 Supreme Court, General Term, Third Department.

PEOPLE *ex Rel.* PARKE DAVIS & COMPANY, Relator,
vs.
JAMES A. ROBERTS, as Comptroller of the State of New York, Respondent.

Please take notice that Parke Davis & Company, the relator above named, hereby appeal to the court of appeals of the State of New York from the order and determination of the general term of the supreme court of the third judicial department, made in the above-entitled proceeding on the 28th day of December, 1895, which said order confirms the determination of the comptroller in imposing and assessing a tax on the relator, and settling an account thereon or or about the 20th day of August, 1895, for the sum $1,386, as specified and set forth in the writ of certiorari herein, and that the defendant recover of the relator $57.69 costs; and from each and every part of the order and determination herein.

Dated this 26th day of January, 1896.

JAMES McKEEN,
Att'y for Relator, 32 *Nassau St., N. Y. City.*

To Hon. T. E. Hancock, attorney general, Albany, N. Y.
To James D. Walsh, county clerk, Albany, N. Y.

48 PEOPLE *ex Rel.* PARKE DAVIS AND COMPANY, Relator,
vs.
JAMES A. ROBERTS, as Comptroller, &c., Respondent.

It is hereby stipulated that the foregoing are true copies of the order appealed from, of the original papers, and the whole thereof

which were used in the court below, and of the notice of appeal therefrom.

Certification by the clerk is hereby expressly waived.

Dated January 29, 1896.

T. E. HANCOCK,
Attorney General.
JAMES McKEEN,
Att'y for Relator.

STATE OF NEW YORK,
City and County of Albany, Clerk's Office, } ss.:

I, James M. Borthwick, clerk of the said city and county, and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that I have compared the annexed copy papers on certiorari on appeal, etc., with the original thereof, filed in this office on the 27 day of June, 1896, and that the same is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have hereunto set
Seal Albany County, July, 1847. my hand and affixed my official seal this 12 day of August, 1896.

J. M. BORTHWICK, *Clerk.*

49 At a special term of the supreme court of the State of New York, held at the court-house, in the city of Albany, N. Y., on the 27th day of June, 1896.

Present: Hon. Alden Chester, justice.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* PARKE DAVIS & COMPANY
against
JAMES A. ROBERTS, as Comptroller of the State of New York.

On reading and filing the remittitur of the court of appeals in the above-entitled action, and on motion of T. E. Hancock, attorney general of the State of New York, of counsel for the comptroller—

It is ordered that the judgment and order of the court of appeals in all things affirming the order of the general term of the supreme court, with costs, be, and the same is hereby, made the judgment and order of this court.

Enter.

ALDEN CHESTER, *J. S. C.*

STATE OF NEW YORK,
City and County of Albany, Clerk's Office. } ss.:

I, James M. Borthwick, clerk of the said city and county, and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that I have compared the annexed copy order on remittitur with the original thereof, filed in this office on

the 27 day of June, 1896, and that the same is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have hereunto set
Seal Albany County, July, 1847. my hand and affixed my official seal this 12 day of August, 1896.

J. M. BORTHWICK, *Clerk.*

50 [Endorsed:] People *ex rel.* Parke Davis & Co. ag'st James A. Roberts, as comptroller, &c. Order making judgment of court of appeals the judgment of this court.

51 Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* PARKE DAVIS & COMPANY *against* JAMES A. ROBERTS, as Comptroller of the State of New York. } Judgment.

A writ of certiorari having been heretofore issued herein to review the action and proceedings of the comptroller of the State of New York in assessing a tax against the relator, and the proceedings having been heard upon the petition, writ of certiorari and return, at a general term of this court, held at the city of Albany, on the — day of December, 1895, and the general term having in all things affirmed the proceedings of the comptroller, and an appeal having been taken by the relator to the court of appeals and due deliberation having been had thereon, and the court of appeals having in all things affirmed the order of the general term of the court with costs, and the records of the court of appeals having been transmitted to the supreme court and made the judgment an order of the supreme court, and the costs having been taxed at the sum of fifty-seven & $\frac{69}{100}$ dollars—

Now, on motion of Theodore E. Hancock, attorney general, of counsel for comptroller of the State of New York,

It is ordered and adjudged that the order & judgment of the general term in this proceedings in all things affirming the determination of the comptroller, in assessing a tax against the relator for the years 1889, 1890, 1891, 1892, 1893, & 1894, at the sum of thirteen hundred & eight-six dollars, be, and the same is hereby, in all things affirmed, and that the comptroller of the State of
52 New York recover of the relator the sum of one hundred & $\frac{33}{100}$ dollars, costs and disbursements as taxed, and have execution therefor.

J. M. BORTHWICK, *Clerk.*

STATE OF NEW YORK,
City and County of Albany, Clerk's Office, } *ss:*

I, James M. Borthwick, clerk of the said city and county and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that I have compared the annexed

copy — judgment with the original thereof, filed in this office on the 27 day of June, 1896, and that the same is a correct transcript therefrom and of the whole of said original.

Seal Albany County, July, 1847.

In testimony whereof I have hereunto set my hand and affixed my official seal this 12 day of August, 1896.

J. M. BORTHWICK, *Clerk.*

53 [Endorsed:] B. 64, p. 48. D. K. People *ex rel.* Parke Davis Company *vs.* James A. Roberts, as comptroller. Judgment. June 27th, 1896, 11.55 a. m.

54 Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* PARKE DAVIS & COMPANY, Plaintiffs,
against
JAMES A. ROBERTS, as Comptroller of the State of New York, Defendants.

To the Honorable Rufus W. Peckham, Justice of the Supreme Court of the United States:

And now comes Parke Davis & Company, by James McKeen, its attorney, and complains that in the record and proceedings and also in the rendition of the judgment of a plea in the suit between The People of the State of New York *ex rel.* Parke Davis & Company, plaintiffs, and James A. Roberts, as comptroller of the State of New York, defendant, which is in the supreme court of the State of New York on a remittitur from the court of appeals of the State of New York, being the highest court of law and equity of the said State in which a decision in said suit could be had, remitting to the said supreme court of the State of New York the record in the said suit, with an order affirming the said judgment theretofore rendered in the said supreme court on the thirteenth day of January, 1896, in favor of the defendants and against the plaintiff, adjudging
55 that the decision of the comptroller in assessing a tax of $1,386 for the six years ending November first, 1894, should in all respects be confirmed and the writ of certiorari herein be dismissed and quashed, with $50 disbursements & costs; upon which direction a final judgment of affirmance was entered in the said supreme court of the State of New York on the twenty-seventh day of June, 1896, with costs in the sum of $100.33, where was drawn in question the validity of a statute of said State and of an authority exercised thereunder, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of such their validity, and where titles, rights, privileges, and immunities *was* claimed under the Constitution of the United States and the decision was against the title, rights, privileges, and immunities specially set up and claimed by the said Parke Davis Company under such Constitution and laws, all of which appears

in the record and proceedings in said suit, manifest error hath happened to the great damage of the said Parke Davis & Company:

Wherefore the said Parke Davis & Company, by its attorney aforesaid, prays for the allowance of the writ of error and such other process as may cause the said error to be corrected by the Supreme Court of the United States and the said final judgment to be re-examined and reversed.

JAMES McKEEN,
Att'y for Pl'ff Relator.

56 Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* PARKE DAVIS & Company, Plaintiff,
against
JAMES A. ROBERTS, as Comptroller of the State of New York, Defendant.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the supreme court of the State of New York in the third judicial department, Greeting:

Because in the record and proceedings, as also in the rendition of judgment of a plea which is in the said supreme court of the State of New York before you or some of you on a remittitur from the court of appeals of the State of New York, being the highest court of law and equity of the said State in which a decision could be had, remitting to you or some of you the final decree or judgment of said court to be in force in the suit between The People of the State of New York *ex rel.* Parke Davis & Company, plaintiff, and James A. Roberts, as comptroller of the State of New York, defendant, wherein was drawn in question the validity of a statute of said State and of an authority exercised thereunder on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of such their validity, a manifest error has happened, to the great damage of Parke Davis & Com-
57 pany, as is said and as appears by its complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be there and then held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and the customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

said Supreme Court, the 4th day of August, in the year of our Lord one thousand eight hundred and ninety-six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
R. W. PECKHAM,
Asso. Jus. Sup. Ct. U. S.
July 31, 1896.

STATE OF NEW YORK, } ss:
City and County of Albany, Clerk's Office, }

I, James M. Borthwick, clerk of the said city and county, and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that I have compared the annexed copy, petition, and writ of error with the original thereof, filed in this office on the 6 day of August, 1896, and that the same is a correct transcript therefrom and of the whole of said original.

Seal Albany County, July, 1847.

In testimony whereof I have hereunto set my hand and affixed my official seal this 14 day of August, 1896.

J. M. BORTHWICK, *Clerk.*

58 [Endorsed:] Supreme Court of the United States. The People of the State of New York *ex rel.* Parke Davis & Company, plaintiffs, against James A. Roberts, as comptroller of the State of New York. Copy, petition, and writ of error. James McKeen, plaintiff's attorney, 32 Nassau street, New York. Due service of a copy of within petition and writ of error admitted Aug. 10th, 1896. T. E. Hancock, att'y gen'l.

59 Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* PARKE DAVIS & COMPANY, Plaintiff,
against
JAMES A. ROBERTS, as Comptroller of the State of New York, Defendant.

UNITED STATES OF AMERICA, *ss:*

To James A. Roberts, comptroller of the State of New York; Hon T. E. Hancock, attorney general, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof, 1896, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of New York in and for the county of Albany, wherein The People of the State of New York *ex rel.* Parke Davis & Company are plaintiffs and you are defendants, to show cause, if any there be, why the judgment in the same writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Seal Albany County, July, 1847.

Witness the Hon. Rufus W. Peckham, associate justice of the Supreme Court of the United States, the 31 day of July, 1896.

R. W. PECKHAM,
Asso. Justice Supreme Court U. S.

STATE OF NEW YORK, *City and County of Albany, Clerk's Office,* } ss:

I, James M. Borthwick, clerk of the said city and county, and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that I have compared the annexed copy citation with the original thereof, filed in this office on the 6 day of August, 1896, and that the same is a correct transcript therefrom and of the whole of said original.

Seal Albany County, July, 1847.

In testimony whereof I have hereunto set my hand and affixed my official seal this 14 day of August, 1896.

J. M. BORTHWICK, *Clerk.*

60 [Endorsed:] Supreme Court of the United States. The People of the State of New York *ex rel.* Parke Davis & Company, plaintiff, against James A. Roberts, as comptroller of the State of New York, defendant. (Copy.) Citation. James McKeen, plaintiff's attorney, 32 Nassau street, New York. I hereby accept due personal service of this citation on behalf of James A. Roberts, as comptroller, etc., this 10 day of August, 1896. T. E. Hancock, att'y general.

61 Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK, *ex Rel.* PARKE DAVIS & COMPANY, Plaintiff,
against
JAMES A. ROBERTS, as Comptroller of the State of New York, Defendants.

Know all men by these presents that we, Parke Davis & Company, as principal, and John Clay, as surety, are held and firmly bound unto the defendant, The Comptroller of the State of New York, in the full and just sum of five hundred dollars, lawful money of the United States of America, to be paid to the said comptroller of the State of New York; for the payment of which, well and truly to be made, we bind yourselves, our heirs, executors, and administrators by these presents. Sealed with our seals and dated this 29th day of July, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas the above-named Parke Davis & Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the supreme court of the State of New York upon remittitur from the court of appeals of the State of New York, in an action wherein The People *ex rel.* Parke Davis &

Company is plaintiff and James A. Roberts, as comptroller of the State of New York, is defendant:

Now, therefore, the condition of this application is such that
62 if the said Parke Davis & Company shall prosecute said writ of error to effect and answer all damages and costs if it fail to make the said plea good, then the above obligation to be void else to remain in full force and virtue.

JOHN CLAY [SEAL.]

Sealed and delivered in the presence of—
HENRY F. SMITH.

CITY, COUNTY & STATE OF NEW YORK, *ss.:*

John Clay, the obliger above named, being duly sworn, deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JOHN CLAY.

Sworn to before me this 29th day of July, 1896.
[NOTARY'S SEAL.] HENRY F. SMITH,
Notary Public, Kings County

Cert. filed in N. Y. Co.

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

On this 29th day of July, 1896, before me personally came John Clay, to me personally known and known to me to be the individual described in and who executed the foregoing bond or obligation, and he thereupon acknowledged to me that he executed the same for the purposes therein mentioned.

[NOTARY'S SEAL.] HENRY F. SMITH,
Notary Public, Kings County.

Cert. filed in N. Y. Co.

STATE OF NEW YORK, }
City and County of Albany, Clerk's Office, } *ss.:*

I, James M. Borthwick, clerk of the said city and county, and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that I have compared the annexed copy of bond with the original thereof filed in this office on the 6 day of August, 1896, and that the same is a correct transcript therefrom and of the whole of said original.

Seal Albany County, July, 1874.

In testimony whereof I have hereunto set my hand and affixed my official seal this 14 day of August, 1896.

J. M. BORTHWICK, *Clerk.*

63 [Endorsed:] Supreme Court of the United States. The People of the State of New York *ex rel.* Parke Davis & Company, plaintiff, against James A. Roberts, as comptroller of the State

of New York, defendant. (Copy.) Bond. James McKeen, plaintiff's attorney, 32 Nassau street, New York. Approved July 31, 1896. R. W. Peckham. Service of a copy of within bond & notice admitted this 10 day of August, 1896. T. E. Hancock, att'y gen'l.

SIR: Please take notice that within is a copy of a bond this day filed with the clerk of the supreme court, at Albany.

Dated August 8th, 1896.

JAMES McKEEN,
Att'y for Parke Davis & Co.

64 Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* PARKE DAVIS & COMPANY, Plaintiff,
against
JAMES A. ROBERTS, as Comptroller of the State of New York, Defendant.

Of October term, in the year of our Lord one thousand eight hundred and ninety-six.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the same Parke Davis & Company, by James McKeen, their attorney, and says that in the records and proceedings aforesaid and also in said judgment there is manifest error in this, to wit, that in the record aforesaid it appears that the judgment aforesaid was given for the said defendant and against the said plaintiff, relator, whereas by the law of the land the judgment should have been given for the said relator against the said defendants, and also in this, to wit, that the said relator claimed that it was entitled to be repaid the amount of the taxes paid by it and was entitled in the court of appeals of the State of New York to a reversal of the determination and judgment of the supreme court adjudging that the relator pay to the defendant $50, costs and disbursements, and that the decision of
65 the comptroller of the State of New York be in all respects confirmed and the writ of certiorari herein be dismissed and quashed on the ground, to wit, the court erred in deciding that L. 1880, ch. 542, of the State of New York, as amended by Laws of 1881, ch. 361; L. 1882, ch. 151; L. 1885, ch. 359 and 501; L. 1889, ch. 353, and L. 1890, ch. 522, and the authority attempted to be exercised within the State of New York and dependent upon the said statute were not repugnant to the Constitution of the United States and were valid, the validity of said statute and said authority having been drawn in question in said suit on the ground of their being repugnant to the Constitution of the United States for the following reasons: (*a*) as being a regulation of interstate commerce; (*b*) as being a regulation of commerce with foreign nations and an imposing of duties and imposts on imports; (*c*) as being a

denial to plaintiff by the State of New York of the equal protection of the laws; (*d*) as being a deprivation by the State of the property of plaintiff without due process of law.

JAMES McKEEN,
Att'y for Plaintiff, Relator.

STATE OF NEW YORK,
City and County of Albany, Clerk's Office, } ss:

I, James M. Borthwick, clerk of the said city and county, and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that I have compared the annexed copy assignment of errors with the original thereof, filed in this office on the 6 day of August, 1896, and that the same is a correct transcript therefrom and of the whole of said original.

Seal Albany County, July, 1847.

In testimony whereof I have hereunto set my hand and affixed my official seal this 14 day of August, 1896.

J. M. BORTHWICK, *Clerk.*

66 [Endorsed:] Supreme Court of the United States. The People of the State of New York *ex rel.* Parke Davis & Company, plaintiffs, against James A. Roberts, as comptroller of the State of New York. (Copy.) Assignment of errors. James McKeen, plaintiff's attorney, 32 Nassau street, New York. Service of within assignment of errors admitted this 10 day of August, 1896. T. E. Hancock, att'y general.

Endorsed on cover: Case No. 16,368. New York supreme court. Term No., 221. The People of the State of New York *ex rel.* Parke Davis & Company, plaintiff in error, *vs.* James A. Roberts, comptroller of the State of New York. Filed August 20, 1896.